is a substantial inducement to employees to minimize the number of hours worked.

(g) For purposes of determining whether and to what extent a plan of compensation on the basis of trip rates or other delivery payment plan has the effect of reducing the weekly hours worked by employees employed by an employer as drivers or drivers' helpers making local deliveries pursuant to such plan:

(1) The *most recently completed representative period of one year* (§ 551.2(c)) or *most recent representative annual period* (§ 551.5(b)(3)) shall mean a one-year period within which such employees were so employed on a regular full-time basis by such employer (or, if such employer has not previously used such plan, by another employer using the plan under substantially the same conditions, which period shall include a calendar or fiscal quarter-year ending not more than four months prior to the date as of which the effect of such plan is to be considered, together with the three quarter-year periods immediately preceding such recently completed quarter-year; and

(2) The *average weekly hours* or *average workweek* of the full-time employees so employed during such annual period shall mean the number of hours obtained by the following computation: (i) All the hours worked during such annual period by all the full-time employees regularly employed under the plan shall be totaled; (ii) the number of workweeks worked by each such employee during such annual period under such plan shall be computed, and the totals added together; and (iii) the average weekly hours, taken in the aggregate, of all such employees shall be computed by dividing the sum resulting from computation (i) by the sum resulting from computation (ii).

§ 551.9 Recordkeeping requirements.

The records which must be kept and the computations which must be made with respect to employees for whom the overtime pay exemption under section 13(b)(11) is taken are specified in § 516.15 of this chapter.

[35 FR 17841, Nov. 20, 1970]

PART 552—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

Subpart A—General Regulations

Sec.

Subpart B—Interpretations

AUTHORITY: Secs. 13(a)(15) and 13(b)(21) of the Fair Labor Standards Act, as amended (29 U.S.C. 213(a)(15), (b)(21)), 88 Stat. 62; Sec. 29(b) of the Fair Labor Standards Amendments of 1974 (Pub. L. 93–259, 88 Stat. 76), unless otherwise noted.

SOURCE: 40 FR 7405, Feb. 20, 1975, unless otherwise noted.

Subpart A—General Regulations

§ 552.1 Terms used in regulations.

(a) *Administrator* means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or the Administrator's authorized representative.

(b) *Act* means the Fair Labor Standards Act of 1938, as amended.

§ 552.2 Purpose and scope.

(a) This part provides necessary rules for the application of the Act to domestic service employment in accordance with the following amendments made by the Fair Labor Standards Amendments of 1974, 88 Stat. 55, *et seq.*

(b) Section 2(a) of the Act finds that the ''employment of persons in domestic service in households affects commerce.'' Section 6(f) extends the minimum wage protection under section 6(b) to employees employed as domestic service employees under either of the following circumstances:

(1) If the employee's compensation for such services from his/her employer would constitute wages under section 209(a)(6) of title II of the Social Security Act, that is, if the cash remuneration during a calendar year is not less than $1,000 in 1995, or the amount designated for subsequent years pursuant to the adjustment provision in section 3121(x) of the Internal Revenue Code of 1986; or

(2) If the employee was employed in such domestic service work by one or more employers for more than 8 hours in the aggregate in any workweek.

Section 7(l) extends generally the protection of the overtime provisions of section 7(a) to such domestic service employees. Section 13(a)(15) provides both a minimum wage and overtime exemption for ''employees employed on a casual basis in domestic service employment to provide babysitting services'' and for domestic service employees employed'' to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.'' Section 13(b)(21) provides an overtime exemption for domestic service employees who reside in the household in which they are employed.

(c) The definitions required by section 13(a)(15) are contained in §§ 552.3, 552.4, 552.5 and 552.6.

(Sec. 29(b), 88 Stat. 76; (29 U.S.C. 206(f)); Secretary's Order No. 16–75, dated Nov. 25, 1975 (40 FR 55913), and Employment Standards Order No. 76–2, dated Feb. 23, 1976 (41 FR 9016))

[40 FR 7405, Feb. 20, 1975, as amended at 44 FR 37221, June 26, 1979; 60 FR 46767, 46768, Sept. 8, 1995]

§ 552.3 Domestic service employment.

The term *domestic service employment* means services of a household nature performed by an employee in or about a private home (permanent or temporary). The term includes services performed by employees such as companions, babysitters, cooks, waiters, butlers, valets, maids, housekeepers, nannies, nurses, janitors, laundresses, caretakers, handymen, gardeners, home health aides, personal care aides, and chauffeurs of automobiles for family use. This listing is illustrative and not exhaustive.

[78 FR 60557, Oct. 1, 2013]

§ 552.4 Babysitting services.

As used in section 13(a)(15) of the Act, the term *babysitting services* shall mean the custodial care and protection, during any part of the 24-hour day, of infants or children in or about the private home in which the infants or young children reside. The term ''babysitting services'' does not include services relating to the care and protection of infants or children which are performed by trained personnel, such as registered, vocational, or practical nurses. While such trained personnel do not qualify as babysitters, this fact does not remove them from the category of a covered domestic service employee when employed in or about a private household.

§ 552.5 Casual basis.

As used in section 13(a)(15) of the Act, the term *casual basis,* when applied to babysitting services, shall mean employment which is irregular or intermittent, and which is not performed by an individual whose vocation is babysitting. Casual babysitting services may include the performance of some household work not related to caring for the children: *Provided, however,* That such work is incidental, *i.e.,* does not exceed 20 percent of the total hours worked on the particular babysitting assignment.

§ 552.6 Companionship services.

(a) As used in section 13(a)(15) of the Act, the term *companionship services* means the provision of fellowship and protection for an elderly person or person with an illness, injury, or disability who requires assistance in caring for himself or herself. The provision of *fellowship* means to engage the person in social, physical, and mental activities, such as conversation, reading, games, crafts, or accompanying